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April 27, 1982

To: Messrs. Greer
Henson
Holtzman
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Stevens
Witt

Re: Meeting at FTC To Discuss Cigarette Testing Program

Horace Kornegay and I met on Thursday morning, April 22, with Wally Snyder, Jim Skiles and Brent Williams at the FTC in connection with the FTC's cigarette testing program. Snyder is Director of the Advertising Practices Division of the Bureau of Consumer Protection, Skiles is Acting Assistant Director of that division and Williams is a staff attorney. The meeting lasted for approximately one hour, with Snyder doing most of the talking.

Snyder opened the meeting by saying that "a couple" of the Commissioners had asked at a recent budget review session whether there is any way of reducing the cost to the FTC of the present cigarette testing program. Snyder said that the Commissioners had asked him to pursue that question and to report back to them at the budget review session that is scheduled for the end of the week of April 26. He also mentioned, much later in the meeting, that the Office of Management and Budget presently is considering a proposal that all in-house testing by departments and agencies of the Federal Government be shifted to private industry.

Snyder stated that he originally had followed up on the Commissioners' inquiry by checking with other government agencies and two private laboratories. According to Snyder, the Department of Agriculture and the Army have at least some of the equipment needed to test cigarettes but neither is willing to take over the FTC's testing program unless the FTC is prepared to pay for it. Snyder indicated that transferring the testing program to Agriculture or the Army under those circumstances would not save the FTC any money and might even increase the FTC's costs -- and he admitted additionally that the Army is not particularly interested in assuming responsibility for the testing.

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In checking with private laboratories, Snyder stated that he had found that the Oak Ridge Laboratory and Dietrich Hoffman were interested in doing the testing but that their costs would be much higher than the FTC's. Snyder said that the FTC presently is spending about $325,000 per year on the testing program, of which $200,000 is paid in salaries, $50,000 to $60,000 is spent purchasing cigarettes and the remainder is spent on equipment and other overhead. Transferring the testing program to Oak Ridge, according to Snyder, would increase the FTC's annual cost to approximately $500,000.

Snyder informed us that, after concluding that transferring the cigarette testing program to another government agency or to a private laboratory probably would increase rather than decrease the FTC's costs, he and his staff began to consider the possibility of having the cigarette companies take over the testing. Snyder said that they had identified two options in that regard: (1) relying on the individual cigarette companies to do the testing or (2) having the testing done exclusively by TITL. Snyder said that, in either event, he would expect the FTC's testing methodology would be used.

Snyder went on to say that he understood that the FTC would have to continue to play some role in the testing and, perhaps, in the reporting of the test results. He suggested, as to the testing itself, that the FTC might continue to monitor and review any proposed changes in the test methodology and act as the arbiter in the event of a dispute concerning some aspect of the testing or the test results. He also stated that he would like at some point to explore with us and the companies the possibility of setting up some sort of arbitration procedure to resolve disputes. He suggested that such a procedure might be an alternative to the FTC's acting as the "policeman" or broker in resolving disputes between the companies.

On the issue of reporting, Snyder suggested that the test results -- after having been reviewed by the individual companies -- might be shipped to the FTC for further review and ultimate publication in the Federal Register. He suggested, as a possible alternative, that the results might simply be included in company advertising, subject to FTC review on an ad hoc basis if a specific question were raised by the Commissioners, FTC staff, one of the companies or a third party.

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Horace responded to Snyder's presentation by stating, as we had near the beginning of the meeting, that we had not been authorized by any of the companies to speak on their behalf. Horace also mentioned that even if one or more of the companies decided that they were interested in the staff's proposals, a number of problems probably would have to be worked out -- and the proposals themselves would have to be thought through carefully.

Snyder interjected at that point that the staff understands that the Barclay "situation" complicates the discussion of possible transfer of responsibility for the cigarette testing program. He then suggested that those complications could be avoided if the FTC were to continue the testing and the companies paid the FTC a "user's fee" equal to the cost of the testing. We responded by indicating that, while again we were not authorized to speak for the companies, we would have some difficulty seeing how the companies would benefit from such an arrangement. Snyder said that he understood that, and added that the FTC's receipt of "user fee" payments also may be prohibited by statute.

After we had assured Snyder and his colleagues that we would inform the companies of the staff's ideas concerning the cigarette testing program, Snyder stated that any agreement that might be reached concerning the program would have to involve some understanding regarding the use in advertising of TPM test results below .5 milligram. The FTC staff does not believe, according to Snyder, that the current machines can produce reliable results below the .5 level. We did not respond to that suggestion, other than to say that the staff would have to pursue that issue -- if it were to be pursued at all -- with the individual companies.

The meeting ended without any firm promise on our part to report back to Snyder. Snyder did make clear, however, that he planned to discuss the cigarette testing program directly with the companies -- and that, indeed, meetings with three companies already had been scheduled.

John P. Rupp

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